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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/534,753

02/16/2006

Hiromi Nambu

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EXAMINER

MERCIER, MELISSA S

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 12/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/534,753

Applicant(s)

NAMBU ET AL.

Examiner

Melissa S. Mercier

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 9-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 9-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5-13-05, 8-9-05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Summary

Receipt of the Preliminary Amendment filed on May 13, 2005 is acknowledged.

Claims 1-4, 9-23 are pending in this application. Applicant has canceled claims 5-8.

Claims 1-4 9-23 are rejected.

Priority

Applicants claim of Priority to PCT/JP03/14449, filed on November 13, 2003 is acknowledged.

Information Disclosure Statement

Receipt of the Information Disclosure Statements filed on May 13, 2005 and August 9, 2005 is acknowledged.

The information disclosure statements filed May 13, 2005 and August 9, 2005 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4, 9-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claims 1-4 and 9-23, it is unclear to the examiner what applicant means by hydrophobated. Applicant has not defined the term, nor has the specification provides one of ordinary skill in the art any direction as to the intended meaning. The examiner is interpreting the term "hydrophobated" to mean a hydrophobic entity linked to a hydrophilic polymer

Claims 4, 11, and 14 recites the limitation "water-absorbing polymer particles" in line 3. There is insufficient antecedent basis for this limitation in the claim. Claim 1, from which Claim 4 depends does not claim water-absorbing polymer particles, but rather surface hydrophobated water-absorbing polymer particles.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 17, 19, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Modi (US Patent 6,083,492).

Claim 1 is drawn to a cosmetic composition comprising a surface-hydrophobated water-absorbing particles and an anti-perspiring component.

Claim 3 is drawn to a cosmetic composition comprising water-absorbing particles, an anti-perspiring component and a silicone compound **or** hydrophobic particles.

Modi discloses "a solid stick, underarm product composition comprising a vehicle, an antiperspirant salt, a dibenzylidene alditol gelling agent, and a co-gelling agent of a hydrophobic ally modified water soluble polysaccharide polymer which comprises a water soluble polysaccharide polymer backbone, a hydrophobic moiety of C₈ to C₂₄ alkyl, aryl alkyl, alkyl aryl groups and mixtures thereof" (abstract).

Additionally regarding Claim 3, the composition of Modi comprises 0.1 to about 3.0% hydrophobic ally modified water-soluble polysaccharide (column 2, lines 58-63).

Regarding Claims 17 and 19, "the antiperspirant salt may be inorganic or organic. It includes any of the conventional aluminum, zirconium, zinc and their combination known to be useful in antiperspirant compositions. These salts include aluminum halides, aluminum hydroxy halides, and mixtures or complexes thereof with zirconyl oxyhalides and zirconyl hydroxyhalides (column 3, lines 19-31).

Claims 3 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Galleguillos et al. (US Patent 5,635,166).

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Claim 3 is drawn to a cosmetic composition comprising water-absorbing particles, an anti-perspiring component and a silicone compound **or** hydrophobic particles.

Galleguillos discloses "a roll on or gel antiperspirant composition comprising about 1-40% by weight of an antiperspirant compound, about 0.005% to about 10% by weight of a hydrophilic polymer, and a carrier" (column 4, lines 42-49).

Galleguillos further discloses, "the transparent, roll-on or gel composition can include a hydrophobic compound. The hydrophobic compound can be a siloxane." (column 5, lines 12-17).

Regarding Claim 19, Galleguillos discloses, antiperspirant compounds include astringent salts including organic and inorganic salts of aluminum, zirconium, zinc and mixtures thereof (column 6, lines 19-42).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 2 and 11-13, 18, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Modi (US Patent 6,083,492) in view of Iley et al. (US Patent 4,818,292).

Modi's teaching are described above and applied in the same manner.

Modi does not disclose the water absorbing particles being coated with a silicone compound, polymer particle sizes of 0.1 to 50um, or the amount of water absorbed into the polymer particles being 5 to 100g/g.

Iley discloses, "a particulate anti-foam ingredient comprising an oily antifoam active substance silicone oil/hydrophobic silica or alkyl phosphate/petroleum jelly, on a carrier of swollen hydrated hydrophilic starch. The antifoam ingredient combines improved storage stability and improved flow properties with rapid release of the antifoam active substance" (abstract).

Regarding Claim 2, Iley discloses, "preferred polysiloxanes are polydimethylsiloxane. The polysiloxane is generally end-blocked with trimethylsilyl groups" (column 4, lines 36-44).

Regarding Claims 11-13, Iley discloses "the hydrophilic starch is partially hydrated, generally to an extent of about 10% by weight" (column 3, lines 30-34). 10% by weight would be within the range of 5 to 100 g/g water to polymer as claimed in the instant claims.

Regarding Claims 18 and 22, as discussed above, Modi discloses, "the antiperspirant salt may be inorganic or organic. It includes any of the conventional aluminum, zirconium, zinc and their combination known to be useful in antiperspirant compositions. These salts include aluminum halides, aluminum hydroxy halides, and mixtures or complexes thereof with zirconyl oxyhalides and zirconyl hydroxyhalides (column 3, lines 19-31).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have combined the teachings of Modi's antiperspirant roll-on/gel with the anti-foaming agents ingredients taught by Iley, since Iley discloses the anti-foaming granules show a reduced tendency toward premature loss during storage of any oily anti-foaming active substances, the anti-foam active substance can be retained within the anti-foam granule until contacted with water" (column 2, lines 32-46). Additionally Iley discloses, "the use of the carrier material, in this case the hydrophilic polymer coated with silicone, gives the major benefit of improved storage stability and improved flow properties" (column 3, lines 50-53).

One of ordinary skill in the art would have a reasonable expectation of success in combining the teachings of Modi with the teachings of Iley since both references teach a hydrophilic polymer coated with a hydrophobic polymer.

Claims 4, 10, and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Modi (US Patent 6,083,492) in view of Bacon et al (US Patent 6,110,449).

Modi's teachings are described above and applied in the same manner.

Modi does not disclose the polymer particle sizes.

Bacon discloses, "anhydrous antiperspirant cream compositions which comprise (a) antiperspirant active; and (b) a perfume/cyclodextrin inclusion complex" (column 2, lines 44-50).

Bacon further discloses, "cyclodextrin materials include those individual cyclodextrins linked together, e.g., using multifunctional agents, to form oligomers, or other polymers, such as cyclodextrin polymers that are formed by crosslinking a cyclodextrin monomer with an aromatic, aliphatic, or cycloaliphatic polyfunctional crosslinking agent" (column 6, lines 44-50). The particle size of the perfume/cyclodextrin complexes typically ranges from about 0.001 μ m to about 12 μ m (column 5, lines 1-5).

Regarding Claims 20-21, as discussed above, Modi discloses, "the antiperspirant salt may be inorganic or organic. It includes any of the conventional aluminum, zirconium, zinc and their combination known to be useful in antiperspirant compositions. These salts include aluminum halides, aluminum hydroxy halides, and mixtures or

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complexes thereof with zirconyl oxyhalides and zirconyl hydroxyhalides (column 3, lines 19-31).

It would have been obvious to a person of ordinary skill in the art to combine the teachings of Modi's composition with the particle size teachings of Bacons compositions, since both compositions are drawn to deodorants, as is the instant claims. In addition, Bacon discloses, particle size can speed the release of the complex inside, in Bacon's case, the perfume and cyclodextrin complex.

One of ordinary skill in the art would have a reasonable expectation of success since both compositions are drawn to deodorant compositions, as well as Bacon further discloses a composition that "has low visible residue, good dry skin feel, is easy to wash off, provides good efficacy, and remains stable over an extended period of time" (column 2, lines 37-42).

Claims 9, and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Modi (US Patent 6,083,492) in view of Iley et al. (US Patent 4,818,292) and Bacon et al (US Patent 6,110,449).

Modi's, Ileys, and Bacon's teachings are described above and applied in the same manner.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teachings of Modi, Iley and Bacon in order to make a stable deodorant compositions (Iley) which has low visible residue, good dry skin feel, is easy to wash off, provides good efficacy, and remains stable over an

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extended period of time (Bacon) and has the ability to speed up the delivery of the water absorbing polymer.

One of ordinary skill in the art would have had a reasonable expectation of success since the combined references all teach similar compositions.

Conclusion

No claims are allowable. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. McDermott et al. (US Patent 5,571,531).


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa S. Mercier whose telephone number is (571) 272-9039. The examiner can normally be reached on 7:30am-4pm Mon through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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